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IN THE UNITED STATES COURT OF FEDERAL CLAIMSFEB 1 9 2004

OFFICE OF SPECIAL MASTERS

U.S. COURT OF FEDERAL CLAIMS

IN RE: CLAIMS FOR VACCINE INJURIES RESULTING IN AUTISM SPECTRUM DISORDER OR SIMILAR NEURODEVELOPMENTAL DISORDER,

VARIOUS PETITIONERS,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

Autism Master File Special Master Hastings

RESPONSE TO THE SPECIAL MASTER'S SCHEDULING ORDER OF FEBRUARY 13, 2004

On February 12, 2004, petitioners' steering committee requested an extension of time to submit their "filing concerning the 'necessity' issue with respect to the pending Merck discovery request." Autism Master File, Scheduling Order dated February 13, 2004. The Special Master granted this request. To the extent that the rationale for petitioners' extension articulated by the February 13, 2004, Order implies that petitioners' delay in this matter is properly attributed to inaction by respondent, respondent is compelled to reply.

DISCUSSION

By Order of the Special Master dated January 16, 2004, petitioners' steering committee was directed to file "no later than February 12, 2004, an expert report or other evidentiary submission supporting the allegation that their requested discovery from Merck is 'necessary' for the [Special Master's] resolution of the causation issues in the Omnibus Autism Proceeding." Autism Master File, Scheduling Order dated January

16, 2004, at 1. On February 12, 2004, petitioners' steering committee requested that the Special Master grant them additional time to prepare their submission. In his Order dated February 13, 2004, the Special Master notes that petitioners were unable to meet the filing deadline "due to the fact that the third batch of uncontested pages of the Merck 'Hepatitis B' PLA (approximately 3200 pages) has not yet been turned over to petitioners." Scheduling Order dated February 13, 2004. Petitioner's request for an extension of time was granted.

The language used in the February 13, 2004, Order may, in one sense, convey that an unforeseen delay by respondent in providing petitioners with material related to the "necessity issue" was the reason that petitioners requested additional time to submit their filing. In fact, when the filing schedule was proposed, it was never anticipated that the material currently in question would be filed before petitioners' submission was due. Indeed, respondent has always stated that this material would be provided to petitioners' steering committee and to the Special Master during the week of February 17, 2004 - the week after the scheduled submission of petitioners' "necessity filing." The issue of when this material would be filed was first linked to the completion of petitioners' submission when their request for an enlargement was made. Moreover, the anticipated schedule for respondent's filing of the material at issue here has been met, and the documents in question were filed and served upon petitioners' steering committee on February 18, 2004.

Respectfully submitted,

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Dated: February 18, 2004

CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2004, a copy of respondent's RESPONSE TO THE SPECIAL MASTER'S SCHEDULING ORDER OF FEBRUARY 13, 2004, was served, by prepaid first class mail, upon:

Thao Ho Williams Bailey, LLP 8441 Gulf Freeway Suite 600 Houston, TX 77017-5001

and

Ghada A. Anis Petitioners' Steering Committee 105 North Alfred Street Alexandria, VA 22314

The foregoing was also provided by facsimile on February 18, 2004, upon the following:

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